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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

JEFFERSON ROBINSON, Plaintiff, vs. THE BEST SERVICE CO., INC., Defendants.	Case No.: 5:16-cv-03346 EJD REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT Honorable Edward J. Davila Date: September 1, 2016 Time: 9:00 a.m. Courtroom: 4 (5th Floor)

Introduction

Plaintiff files suit against Defendant The Best Services, Co., Inc. ("TBSC") for violation of the Federal Fair Credit Reporting Act ("FCRA") and the California Consumer Credit Reporting Agencies Act ("CCRAA"). Plaintiff complains that after his Chapter 13 Reorganization Plan was confirmed, TBSC reported a collection account with a $0.00 balance. Plaintiff claims to have disputed the reporting with the credit bureau, TranUnion, LLC, but TBSC failed to conduct a reasonable investigation and correct the report to reflect bankruptcy status.

An essential element of Plaintiff's Cause of Action against TBSC is the allegation that Plaintiff communicated his dispute to the Credit Reporting Agency, and that the Credit Reporting Agency communicated the dispute to Defendant and that Defendant failed to investigate Plaitniff's dispute. Instead of alleging these facts essential to state a Cause of Action, Plaintiff's Complaint alleges that TransUnion was "..required to send all relevant information to the furnishers [TBSC] which they did not do." [Complaint, Pg. 3, ¶19]. Plaintiff thus alleges that the Credit Reporting Agency never forwarded Plaintiff's dispute to Defendant TBSC, thereby confirming that TBSC is not liable based on the facts alleged in Plaintiff's Complaint.

The undisputed facts set forth in TBSC's moving papers strike the heart of Plaintiff's case and call upon the notion of due process, notice and opportunity to be heard. The undisputed facts prove:

1). Plaintiff paid the debt IN FULL to TBSC BEFORE the bankruptcy was filed. The Bankruptcy Court had no jurisdiction over the Defendant or Defendant's debt because Plaintiff did not owe anything to Defendant when he filed for bankruptcy;

2). Despite having correspondence and settlement documents in their hands indicating TBSC's correct address, Plaintiff and their counsel gave the Bankruptcy Court the **wrong** address for TBSC. Therefore, TBSC never received any notice at all of Plaintiff's bankruptcy until it was served (at its correct address) with this lawsuit;

3). TBSC did not receive notice of the bankruptcy, nor did they ever receive notice of Plaintiff's dispute from Plaintiff or any credit reporting agency; and

4). At all time relevant times herein, Plaintiff's account was reported to TransUnion as a paid collection account with a $0.00 balance.

It is somewhat shocking that an experienced lawyer would argue that these facts state an FCRA claim, much less file a lawsuit in Federal Court.

Argument

I. Plaintiff fails to address TBSC's motion for summary judgment or to present any disputed issues of triable fact and on that basis TBSC's motion for summary judgment should be granted

Plaintiff fails to offer any opposition to TBSC's motion for summary judgment or to present facts, or law, that might tend to prove that there are triable issues of fact. Therefore, TBSC's motion for summary judgment should be granted.

II. An FCRA dispute cannot be a dispute when the Furnisher of credit information is not notified of an alleged inaccuracy

Plaintiff's opposition is akin to a "zombie brief". A reader can sit back and observe it systematically eat itself to death. In other words, the arguments and case law cited by Plaintiff are all filled with factual situations where furnishers of credit received notice of the dispute and they failed to investigate and or correct any inaccurate information. Plaintiff offers no admissible evidence to rebut the evidence offered by TBSC that it never received any notice of Plaintiff's dispute; never had the opportunity to repair the credit reporting; and that TBSC accurately reported that Plaintiff paid his collection account in full prior to filing for bankruptcy relief!

Plaintiff cites *Gorman v. Wolpoff & Abramson LLP*., 584 F.3d 1147 (9th Cir. 2009). This opinion mentions the consumer filing a dispute of the account and the creditor receiving a notice of the dispute of the account **165 times**. Plaintiff's opposition at Page 4, Lines 13 -19 states "A furnisher must refrain from reporting information that is knows or has reasonable cause to believe is inaccurate. Moreover, when a furnisher receives notice of a consumer dispute from a CRA concerning the accuracy of any credit item, the furnisher must reasonably investigate the dispute and, if necessary, correct any past misreporting." By making these arguments, Plaintiff completely ignores the basis for TBSC's motion – **that TBSC never had reason to know of the inaccuracy because it was never notified of the bankruptcy or of the dispute.**

One would think that when Plaintiff's counsel read the *Gorman* case and its 165 references to notification of the dispute, a light bulb would have gone off somewhere saying "Mmmmm, maybe someone should have told TBSC of the dispute before this lawsuit was filed."

III. Even if TBSC had notice of the dispute, the information cannot be said to be inaccurate or derogatory

Plaintiff alleges that TBSC's reporting of a collection account with a $0.00 balance is inaccurate, materially misleading, derogatory and can adversely affect credit decisions. However, Plaintiff has not offered any proof to his allegation and TBSC asserts that this is clearly not the case.

1. The reporting is accurate because the account was, in fact, a past due collection account which was paid in full prior to the bankruptcy and reflected a $0.00 balance. Where is the inaccuracy? Also, what law states that a bankruptcy encompasses past creditors who have been paid in full and owed no money?

2. Plaintiff's credit reports state Plaintiff filed an active Chapter 13 reorganization. Plaintiff cannot possibly prove that a "paid in full" account is more harmful to his credit than an active bankruptcy. Nor, can he prove that a $0.00 balance account would sway an adverse credit decision more than an active bankruptcy. Finally, a $0.00 balance account is not even derogatory.

Plaintiff cites *Wang v. Asset Acceptance LLC.* No. C 09-04797 SI, 2010 U.S. Dist. LEXIS 91946, at 15 (N.D. Cal. July 27, 2010) for the premise that it is improper to re-report overdue payments to CRA's while also failing to report that Plaintiff disputed the account. However, in

Wang, the defendant dismissed a state court complaint for statute of limitations issues, but continued to report the account "..in a manner that suggests it [defendant] could still collect on it." Thus, unlike the current case, the reporting in *Wang* was truly incorrect and inaccurate.

Wang, on the other hand, only strengthens TBSC's defense by ruling:

> Section 1681s-2(b) imposes additional duties on furnishers of information that are triggered only when the furnisher receives notice from a CRA that a consumer disputes the information. *Id*. § 1681s-2(b). The FCRA creates a private right of action for violations of these additional duties. [*Wang*. P. 1146].

Based upon the Wang decision, Plaintiff's first cause of action for violation of Section 1681s-2(b) must fail because the additional duties imposed by 1681s-2(b) can only be triggered when the furnisher receives notice from a CRA –something that never happened in this case.

Conclusion

Based upon the foregoing, the motion of TBSC to dismiss the complaint, or in the alternative to grant summary judgment should be granted with prejudice and without leave to amend.

Respectfully submitted,

DATED: August 3, 2016 LAW OFFICES OF CLARK GAREN

By:____/s/ Kevin Kump______________________
Kevin Kump, Esq.
Attorneys for Defendant
The Best Service, Co., Inc.

CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. My business address is 6700 S. Centinela Ave., 3rd. Floor, Culver City, CA 90230. On August 3, 2016, I served a true copy of:

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

on the below interested parties in this action by use of the Court's CM/ECF Electronic Filing System.

SEE ATTACHED SERVICE LIST

I caused the documents listed above to be filed electronically using the Court's Electronic Filing System which constitutes service, pursuant to General Order 550 of the above-titled Court, upon the counsel on the service list.

I declare under penalty of perjury under the laws of the United States of America that I am a member of the Bar of this Court and that the foregoing is true and correct.

Dated: August 3, 2016

s/ Kevin Kump
Kevin Kump

SERVICE LIST

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